

Sri Sudip Ghosh Vs. the State

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Court : Kolkata

Decided On : Mar-02-2000

Reported in : (2001)2CALLT432(HC)

Judge : Basudeva Panigrahi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 401 and 482;; [Indian Penal Code \(IPC\), 1860](#) - Sections 120, 156(3), 347, 379, 387, 406, 420, 467, 468, 471, 479 and 506

Appeal No. : C.R.R. No. 2146 of 1999

Appellant : Sri Sudip Ghosh

Respondent : The State

Advocate for Def. : Mr. Sudipta Moitra, Adv.

Advocate for Pet/Ap. : Mr. Ashok Mukherjee, Adv.

Disposition : Application dismissed

Judgement :

B. Panigrahi, J.

1. This revision is directed against an order of taking cognizance against the petitioner under section 387/347/379/471/406/ 469/468/506 of Indian Penal Code

passed by the learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas in Case No. C-347 of 1999.

2. A short history of the prosecution case is that on 26.4.99 at about 11 A.M. the complainant and three other witnesses went to the company's office for performing their duties as directed. All on a sudden at about 1.30 p.m. the petitioner with other 30 to 40 miscreants entered into the board room with deadly weapons and asked them to put their signature in blank papers. Therefore, under such constant threat the defacto complainant and other witnesses were, however, forced to put their signature in blank papers. The petitioner and his associated started abuses in filthy language against the defacto complainant and other witnesses. The petitioner and others further assaulted them with list blows which caused mental and physical torture to them. Immediately after the occurrence they went to the local police station and narrated the Incident to which the police assured them to take suitable action. But when they failed to take action against the petitioner, the defacto complainant was forced to lodge a complaint case before the learned Additional Chief Judicial Magistrate. The case was, however, referred to the local police under section 156(3) for causing investigation. After the police submitted the report cognizance was taken against the petitioner. Therefore, being aggrieved by such taking of cognizance, he has preferred this revision.

3. Mr. Mukherjee, learned advocate appearing for the petitioner has submitted that a false report was lodged against the petitioner, since he has been appointed as Director of the Company. As the defacto complainant and other associates have voluntarily submitted documents expressing their unwillingness to act as director and those documents were used against them, therefore, the defacto complainant just to undo the effect of those documents, filed a criminal case against the petitioner.

4. Another contention has been raised by the petitioner that there were several suits pending between the petitioner and the defacto complainant, wherein the defendant was restrained from entering into the affairs of the Company. Till date the defacto complainant nor his associate has taken any steps to vacate the interim order. From the order in question passed by the learned Additional Chief

Judicial Magistrate, it appears that he directed the Officer-in-charge, Beniapukur for causing investigation under section 156(3) of Cr.PC. Pursuant to the said direction it has appeared that the Officer-in-charge after investigation submitted a report on the basis of which the process has been issued against the petitioner.

5. The sole question that arises for consideration before me is whether the allegation made in the FIR left to itself, would constitute any offence. Even assuming such allegation constituted the commission of any offence, but in case, it is found the fact stated in the complaint or in the FIR was absurd and improper on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused and/or where there is express legal bar engrafted in any of the provisions of the Code or the concerned Act or where a criminal proceeding is manifestly attended with mala fide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the Court is competent to invoke the provision of section 482 of Cr.PC.

6. In this case, the petitioner vis-a-vis the defacto complainant were the board of directors in the company. There were some disputes as regards the status of director of the petitioner vis-a-vis the defacto complainant for which a civil suit was filed challenging the authority of the defacto complainant, While on the other hand, the defacto complainant has alleged that he and other witnesses were forced to put their signature in the blank papers. Whether such fact has taken place or not, it requires detailed proof. The learned Magistrate after considering the report of the Officer-in-charge has taken cognizance against the present petitioner. Therefore, at this stage, I think it would be pre-mature to come to the conclusion that it was maliciously, mischievously or with ulterior motive Initiated against the petitioner. It can only be determined after due consideration of the evidence.

7. The learned advocate appearing for the petitioner has relied upon a judgment reported in 1997(2) All India Criminal Law Reporter page 435 in the case of Sunita atlas Pinky v. Suntta & Air. and also : 1992 CriLJ527 in the case of State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., where it was held that-

'where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the provisions of section 482 Cr. PC can be Invoked. It was also held by the Hon'ble Supreme Court in this very Judgment that where the uncontroverted allegations made in the First Information Report or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused or where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused or where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act or where a criminal proceeding is manifestly attended with mala fide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the High Court is competent to invoke the provisions of section 482 Cr. PC though sparingly and in rare of the rarest cases. In the light of the dictum laid down by the Supreme Court in Ch. Bhajan Lal's case (supra) this Court is not in agreement with the submission of Sri Savra, that after summoning order, in no case, the provisions of section 482 can be invoked. The case law relied upon by Shri Savra reported in Jai Chand & Ors. v. Ashu Bala and Anr. (supra), Vir M. Khosla and Anr. v. State of Punjab 1992(2) Recent Criminal Reports 290; 1996(3) All India Criminal Law Reporter (SC); and Bal Chand v. State of Haryana 1995(3) Recent Criminal Law Reports 148, are not applicable to the facts in hand. All these authorities stand on their own footing. A perusal of these authorities would show that in every case there were specific allegations against the petitioners. Those allegations were not vague. Prima facie those allegations on their face value constitute an offence and for that reason enquiry was necessary in each case and the Hon'ble judges were pleased to hold that when the allegations prima facie disclose an offence, those allegations must be scrutinised by a competent court of jurisdiction and if on those allegations the Magistrate consider proper to summon an accused, such complaint and the summoning order should not be interfered by the High Court under section 482 of the Code of Criminal Procedure. This Court has already stated above that once

the allegations are under judicial scrutiny, High Court should be slow in interfering under section 482 Cr. PC. However if the complaint does not disclose if the allegations of the complainant had disclosed the commission of any offence or the acts of alleged cruelty would not be enquired into in view of the statutory bar as envisaged under section 468 Cr. PC, such a complainant should not be allowed to suck the blood of innocent persons under the threat of a complaint and the summoning order and the High Court in such circumstances should be the first person to protect the rights of such person as that they may not suffer botheration of the trial and they must be relieved of the mental agony. The case in hand will be looked into from the above settled principles of law.'

8. Mr. Mukherjee has also relied upon a Judgment of the Supreme Court reported in 1998 Calcutta Criminal Law Reporter page 402 in the case of Ashok Chaturvedi v. Shitul H Chanchal, wherein it was held in para 5 that-

'We are clearly of the opinion that the necessary ingredients of any of the offence have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the said allegation that the shares of the complainant have been transferred on the forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. In our considered opinion even if the allegations made in the complaint petition and the statement of complainant and his witnesses are taken on their face value, the offence under sections 406, 420, 467, 467, 468 and 120 of the Indian Penal Code cannot be said to have been made out. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5.2.96 taking cognizance of the offence as against the appellants stand quashed.'

9. There is no quarrel with regard to the legal proposition enunciated by the Hon'ble Supreme Court. In the latest judgment it is found that the allegation was vague, which did not constitute any offence. Therefore, the Apex Court felt to quash the criminal proceeding. But in this case, the learned advocate has not been able to convince me that the allegation made in the complaint did not constitute any offence.

Therefore, in the above situation, I do not find any adequate reason to interfere with the order passed by the learned Magistrate.

Accordingly, the revisional application falls.

10. Application dismissed

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